
GORDON-CREED
KELLEY, HOLL &
SUGERMAN LLP

222 Kearny Street, Suite 650
San Francisco, California 94108
Phone (415) 421-3100
Fax (415) 421-3150
www.gkhs.com

October 8, 2014

Honorable Magistrate Judge Joseph C. Spero
United States District Court for the Northern District of California
450 Golden Gate Avenue, Courtroom G - 15th Floor
San Francisco, CA 94102

Re: *Ingrid & Isabel, LLC v. Baby Be Mine, LLC, et al.*
USDC Case No. 13-cv-1806-JCS

Dear Judge Spero:

Defendants write to request that defendants' *Daubert* motions be placed back on the October 17 motion calendar. Plaintiff does not agree. Defendants' reasons are as follows:

In July, the parties agreed to put off expert depositions until after the summary judgment hearing so that we would know which issues were remaining for expert testimony. When the order on summary judgment was delayed due to the parties' participation in mediation, a second agreement was made to put off the expert depositions after the *Daubert* motions for the same reasons. This last agreement was confirmed by counsel at court after the most recent case management conference on October 3.

The Court has now continued the *Daubert* motions to October 21 but has also ordered the parties to a settlement conference on October 17.

At this point, the parties have four expert depositions to take. One of these, defendants' rebuttal survey expert James Berger, is to occur outside Chicago. If the *Daubert* motions do not take place until the 21, that leaves only eight days before trial in which to take the depositions. In addition, and as discussed at the last case management conference, plaintiff's survey expert Sarah Butler has offered opinions only on issues already resolved by the Court's order on summary judgment. Plaintiff's insistence on continuing to use Ms. Butler as an expert puts defendants in a bind – Mr. Berger has prepared a report on and is prepared to testify regarding opinions Ms. Butler actually expressed, not those she may express in the future. If the Court does not grant defendants' *Daubert* motion as to Ms. Butler, defendants will need to depose Ms. Butler, obtain a transcript, get it to Mr. Berger in time for him to review, consider and prepare a

rebuttal before his deposition in Illinois. With such a short time frame, even four days could make a significant difference.

There is further good cause to have the *Daubert* motions heard on October 17. Upon leaving court on October 3, I was notified by the First District Court of Appeal that one of my cases (*Fireman's Fund Insurance Company v. Dominique Black*, Case no. A136603) has been scheduled for oral argument on October 24. Because the parties to that case have been waiting since December for a hearing date, no party wants to seek a continuance. I will of course need some time to prepare for the hearing (the record is in 12 volumes), so any extra day would be valuable.

The parties to this case will already be at the courthouse on October 17. The *Daubert* motions have been fully briefed. Although plaintiff's counsel has not given us a reason for opposing this request, no party or counsel will be inconvenienced by returning the *Daubert* motions to the October 17 calendar.

Thank you for your consideration of this matter.

Respectfully submitted,

GORDON-CREED, KELLEY,
HOLL & SUGERMAN, LLP

/s/ Jeremy Sugerman

Jeremy Sugerman

JS:ljh

Dated: 10/10/14

